

## HOUSE BILL NO. 499

INTRODUCED BY T. FACEY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A CREDIT AGAINST CERTAIN PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS; ESTABLISHING ELIGIBILITY CRITERIA FOR USE OF THE CREDIT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO IMPLEMENT THE CREDIT; PRECLUDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW FROM ADJUSTING CERTAIN FEES INCREASING FEE ASSESSMENTS BEYOND LEGISLATIVE APPROPRIATION LEVELS TO OFFSET THE COST OF THE CREDIT; AMENDING SECTION 75-2-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** For the purposes of [sections 1 through 4], unless otherwise required by the context, the following definitions apply:

(1) "Applicant" means a person submitting a permit application for which the person is required to pay a fee under 75-2-220 AND INCLUDES A PERMITHOLDER WHO SHALL PAY ONLY THE PAYS AN ANNUAL FEE.

(2) (a) "Postconsumer glass" means glass or glass-like material that has:

(i) served its final intended use;

(ii) been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use in Montana;

(iii) useful physical or chemical properties remaining after having served a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer.

(3) (a) "Recycled material" means a substance, compound, conglomeration, mixture, or the like that is composed, in whole or in part, of postconsumer glass.

(b) Material that contains postconsumer glass is recycled material for the purposes of this section if the postconsumer glass is used as or a component of:

(i) fill, aggregate, or surface material used in construction or road construction;

(ii) sandblasting material;

(iii) landscaping material; or

(iv) a sandstone replacement in the manufacture of cement.

(c) The uses included in subsection (3)(b) are not exclusive, and other uses of postconsumer glass as a substitute for the use or consumption of new material may also be considered by the department as recycled material.

**NEW SECTION. Section 2. Amount and duration of credit -- how claimed.** (1) An applicant may receive a credit against the fees imposed in 75-2-220 for using postconsumer glass in recycled material if the applicant qualifies under [section 3].

(2) Subject to [section 3(2)], an applicant qualifying for a credit under [section 3] is entitled to claim a credit, as provided in subsection (3) of this section, for using postconsumer glass in recycled material in the calendar year subsequent to the calendar year in which the postconsumer glass was used in recycled material. If postconsumer glass was used in recycled material prior to January 1, 2002, but on or after January 1, 2001, an applicant is entitled to a credit for calendar year 2002.

(3) (a) The amount of the credit that may be claimed under this section is \$7 for each ton of postconsumer glass that was used as a substitute for nonrecycled material in the calendar year prior to the calendar year for which the applicant is paying fees for permits under 75-2-220.

(b) The maximum credit allowable in any calendar year for fees payable under 75-2-220 is \$1,500 or the total amount of fees due, whichever is less.

**NEW SECTION. Section 3. Credit for use of postconsumer glass.** (1) The following requirements must be met for an applicant to be entitled to a credit for the use of postconsumer glass:

(a) The postconsumer glass must have been used in recycled material in the calendar year prior to the calendar year in which the applicant is applying for and paying for permits under 75-2-220.

(b) (i) The applicant claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that uses postconsumer glass in recycled materials. The use of postconsumer glass as recycled material may be a minor or nonprofit part of a business otherwise engaged in a business activity.

(ii) The applicant may but need not operate or conduct a business that uses postconsumer glass

1 as recycled material. If more than one person has an interest in a business with qualifying uses of  
2 postconsumer glass, they may allocate all or any part of the allowable credit among themselves and their  
3 successors or assigns.

4 (c) The business must have been owned or leased by the applicant claiming the credit during the  
5 calendar year prior to the calendar year for which the permit fees are due under 75-2-220, except as  
6 otherwise provided in subsection (1)(b), and must have used postconsumer glass in recycled material  
7 during the calendar year prior to the calendar year for which the credit is claimed.

8 (d) The postconsumer glass used in recycled material may not be an industrial waste generated  
9 by the person claiming the credit unless:

10 (i) the person generating the waste historically has disposed of the waste onsite or in a licensed  
11 landfill; and

12 (ii) standard industrial practice has not generally included the reuse of the waste in the  
13 manufacturing process.

14 (2) A credit under this section may be claimed by an applicant for a business only if the qualifying  
15 postconsumer glass was used in recycled material before January 1, 2006.

16 (3) The credit provided by this section is not in lieu of any other incentive to which the applicant  
17 otherwise may be entitled under Title 15 or this chapter.

18 (4) A credit otherwise allowable under this section that is not used by the applicant in the  
19 calendar year for which the permits are applied may not be:

20 (a) carried forward to offset an applicant's permit fees for any succeeding calendar year; or

21 (b) carried back to offset an applicant's permit fees for any preceding calendar year.

22

23 NEW SECTION. **Section 4. Postconsumer glass qualifying for credit -- ~~purpose~~ -- rulemaking.** (1)  
24 ~~The purpose of providing a credit for using postconsumer glass in recycled materials is to encourage the~~  
25 ~~use and reuse of postconsumer glass and to discourage the use or consumption of new material whenever~~  
26 ~~recycled material could be substituted. To achieve this goal, the application and interpretation of the~~  
27 ~~definitions of postconsumer glass and recycled material must be left to department expertise. Definitions~~  
28 ~~cannot be legislatively enacted to achieve the purpose of this section because of rapid changes in~~  
29 ~~technology, social awareness, and market economics. It is the intent of the legislature that, for the~~  
30 ~~purposes of clarification and applicability, the department revise, as often as it considers necessary to fulfill~~

1 ~~the purpose of this section, the definitions of postconsumer glass and qualifying recycled material.~~

2 ~~(2)(1)~~ The department shall adopt rules describing postconsumer glass and recycled material that  
3 qualify for the credit authorized by [section 3].

4 ~~(3)(2)~~ In addition to the public participation provisions of Title 2, chapter 4, the department shall  
5 maintain a register of interested persons and experts in the field of recycling postconsumer glass. ~~If~~  
6 ~~considered to be practical by the department and to prevent duplication, the department may rely upon~~  
7 ~~the register established in 15-32-609. Prior to proposing an administrative rule, the~~ THE department shall  
8 mail a notice to the interested persons identified under this subsection of the department's contemplated  
9 actions, soliciting their views on possible solutions or courses of action. ~~All proposed and adopted rules~~  
10 ~~must also be mailed to the interested persons.~~

11 ~~—— (4) The department shall by rule designate one or more agencies that are generally recognized in~~  
12 ~~the industry to certify the contents of recycled materials that contain postconsumer glass.~~

13

14 **Section 5.** Section 75-2-220, MCA, is amended to read:

15 **"75-2-220. Fees -- special assessments -- late payment assessments -- credit.** (1) Concurrent with  
16 the submittal of a permit application required under this chapter and annually for the duration of the permit,  
17 the applicant shall submit to the department a fee, ~~as adjusted pursuant to subsection (11),~~ sufficient to  
18 cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements  
19 in this chapter, ~~including, including THE AMOUNT OF THE FEE IS SUBJECT TO THE LIMITATION IN SUBSECTION (12).~~  
20 ~~THE COSTS THAT MAY BE CONSIDERED IN ESTABLISHING THE FEE MAY INCLUDE:~~

21 (a) reviewing and acting upon the application;

22 (b) implementing and enforcing the terms and conditions of the permit. This amount does not  
23 include any court costs or other costs associated with an enforcement action. If the permit is not issued,  
24 the department shall return this portion of the fee to the applicant.

25 (c) emissions and ambient monitoring;

26 (d) preparing generally applicable regulations or guidance;

27 (e) modeling, analysis, and demonstrations;

28 (f) preparing inventories and tracking emissions;

29 (g) providing support to sources under the small business stationary source technical and  
30 environmental compliance assistance program; and

1 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act,  
2 42 U.S.C. 7661, et seq.

3 (2) In recovering the costs described in subsection (1), the department may assess an application  
4 fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants  
5 regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant  
6 regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air  
7 pollutant subject to a national primary ambient air quality standard. ~~THE BOARD MAY NOT CONSIDER THE COST~~  
8 ~~OF THE CREDITS ALLOWED UNDER [SECTION 3] WHENEVER MAKING AN ANNUAL ADJUSTMENT OF FEES ALLOWED IN THIS~~  
9 ~~SUBSECTION.~~

10 (3) The board shall by rule provide for the annual adjustment of all fees assessed for operating  
11 permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index,  
12 as required by Subchapter V of the federal Clean Air Act.

13 (4) In addition to the fee required under subsection (1), the board may order the assessment of  
14 additional fees, ~~SUBJECT TO SUBSECTION (12),~~ required to fund specific activities of the department that are  
15 directed at a particular geographic area if the legislature authorizes the activities and appropriates funds  
16 for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or  
17 emissions inventories or tracking. Additional assessments may be levied only on those sources that are  
18 within or are believed by the department to be impacting the geographic area. Before the board may  
19 require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are  
20 necessary for the administration or implementation of this chapter, that the amount of the requested fees  
21 is appropriate, that the assessments apportion the required funding in an equitable manner, and that the  
22 department has obtained the necessary appropriation. The contested case provisions of the Montana  
23 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this  
24 subsection.

25 (5) (a) If the applicant or permit holder fails to pay in a timely manner a fee required under  
26 subsection (1), in addition to the fee, the department may:

27 (i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as  
28 provided in 15-1-216; or

29 (ii) revoke the permit consistent with those procedures established under this chapter for permit  
30 revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant or permit holder has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The board shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The board may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the board may by rule require the permit holder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more than one fee annually to a source of air pollutants for the costs identified in subsection (1).

(11) The total of the fees charged to AN APPLICANT under subsections (1) and (4) must be reduced by the amount of any credit accruing to the applicant under [section 2]. THE DEPARTMENT MAY NOT INCREASE FEE ASSESSMENTS BEYOND LEGISLATIVE APPROPRIATION LEVELS TO ADJUST FOR ANY CREDIT CLAIMED UNDER [SECTION 2]. THE CREDIT APPLIED UNDER [SECTION 2] MAY NOT LIMIT THE DEPARTMENT'S ABILITY TO COLLECT FEES SUFFICIENT TO COVER THE REASONABLE COSTS, BOTH DIRECT AND INDIRECT, OF DEVELOPING AND ADMINISTERING THE PERMITTING REQUIREMENTS OF THIS CHAPTER.

~~(12) (A) IN DETERMINING THE REASONABLE COSTS OF DEVELOPING AND ADMINISTERING THE PERMITTING REQUIREMENTS UNDER SUBSECTION (1), THE DEPARTMENT MAY NOT CONSIDER THE COST OF CREDITS CLAIMED UNDER [SECTION 2].~~

~~(B) IN DETERMINING THE AMOUNT OF THE ADDITIONAL FEES AUTHORIZED IN SUBSECTION (4), THE BOARD MAY NOT CONSIDER THE COST OF CREDITS CLAIMED UNDER [SECTION 2]."~~

NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to [sections 1 through 4].

**NEW SECTION.** **Section 7. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 8. Termination.** [This act] terminates December 31, 2005.

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